by Alwee Alkaff for such period prior to January 1, 1968, including the charges for the use of utilities, he himself as an advocate and solicitor accepted the tenancy only with effect from January 1, 1968. The formal tenancy agreement was executed only on February 15, 1968 with retrospective effect. Whilst Balan Nair had produced correspondence addressed to his firm at the controlled premises in the Arcade prior to January 1, 1968, such correspondence merely established that he had chosen to give that address and do not of themselves without further corroboration establish that he was in fact in occupation of the premises. Any prudent person intending to operate from new premises in the near future might have done this especially when he expected that a reply might not be forthcoming until after January 1, 1968. Without any other supporting or corroborating evidence of his occupation of the controlled premises prior to January 1, 1968, the mere production of these correspondence does not in our view establish conclusively that he was in occupation at any date prior to January 1, 1968.

Nair's accounts included an item of expenditure for rent. These were unaudited accounts and it is possible that Balan Nair may have agreed as part of the consideration for his securing the tenancy to meet the arrears of rent payable by Alwee Alkaff. It was natural for him to include such expenditure in the expenses of his new firm. This item in the unaudited accounts of themselves do not conclusively establish his occupation of the premises as from November 27, 1967.

The Board therefore had conflicting evidence, on the one hand some indication that Balan Nair and his firm of Nair & Majeed might have come into occupation of the controlled premises on November 27, 1967, and on the other hand more conclusive evidence in our view that the tenancy of the premises only commenced from January 1, 1968. We have given serious consideration to these conflicting evidence and have come to the conclusion that on balance the evidence more conclusively adduced by the Landlord ought to prevail. It is reasonable to conclude that Balan Nair, a person most aware of his rights in this regard, must have agreed that the tenancy of No. 36, The Arcade, should commence from January 1, 1968, although he may have incurred some expenses in connection thereto prior to that date which is now indicated in his accounts. Balan Nair is consequently not entitled to compensation as the provisions of section 9(1)(a) of the Act would apply in his case as he is unable to establish with reasonable certainty that he was in occupation of the controlled premises in question prior to January 1, 1968.

One other point upon which we need to rule in this Award is related to the contention made by counsel for Balan Nair that the onus of proof of occupation as from a certain date should lie with the Landlord other than the tenant in so far as the application of the provisions of section 9 of the Act is concerned. We do not agree with this contention and are of the view that the provisions of that section place the onus of proving continuous occupation prior to January 1, 1968 squarely upon the tenant himself whenever there is a doubt as to the actual date of occupation affecting the entitlement of any tenant to compensation under the Act.

Solicitors: *V. Ramakrishnan & Co.; Chan, Goh & Co.*

MALAYSIAN REPORTS

VU SIEW CHIN v. WONG FAH YOON

[F.C. (Wan Suleiman, Syed Othman and Abdul Hamid F.JJ.) September 9 & December 30, 1981]

[Johore Bahru – Federal Court Civil Appeal No.267 of 1980]

Practice and Procedure – Whether person who is sole owner of company can be sued – Point of law set down for hearing – R.S.C. 1957, O.25 r.2 & O.48A r.11.

In this case the respondent claimed a sum of $10,248.13 advanced to the appellant for the supply of logs. The money was paid to the appellant trading under the name of Westlake Timber Company at the request of the appellant. Judgment was given for the respondent and the appellant appealed. It was argued on the appeal that the respondent had sued the wrong party and should have sued Westlake Timber Sdn. Bhd.

Held: a person who is the sole owner of a company may be sued in the company name.

Case referred to:

(1) *Mason & Son* v. *Mogridge* (1892) 8 T.L.R. 805.

FEDERAL COURT.

P.S. Gill for the appellant.
Ong Ban Chai for the respondent.

Cur. Adv. Vult.

Wan Suleiman F.J. (delivering the Judgment of the Court): The respondent, a timber merchant, claims for the refund of $10,248.13 advanced to the appellant for supply of logs, interest thereon since date of issue of writ and for further and other relief.

The respondent was trading in timber and the appellant supplied him with logs. The respondent paid a deposit of $20,000 to Skt. Keratong Logging Sdn. Bhd. for supply of timber logs. This amount was transferred to Vu Siew Chin (the appellant) trading under the name of Westlake Timber Co. at the request of the appellant. The appellant supplied logs and the respondent paid further sums at various intervals. Then the appellant stopped supplying logs. The respondent commenced this action to claim the balance of deposit of $10,248.13.

At the hearing both counsel agreed to proceed on documents and points of law only. In short they were agreeing to the procedure under the old Rules of the Supreme Court contained in 0.25 r.2 – Proceedings in lieu of demurrer. Rule 2 reads:–

"Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the court or a Judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial."

Counsel for the appellant argued that the respondent had sued the wrong party and that he should have sued Westlake Timber Sdn. Bhd. He argued that the latter company and not the appellant was liable. The learned trial judge noted that though this point of law was not argued, in effect the appellant Vu Siew Chin had been trading under the name and style of Westlake Timber Sdn. Bhd. and should not be excluded from being part and parcel of the company being the sole owner. There was evidence that she had acknowledged the payment for and on behalf of the company in the documents agreed by both sides, an admission that she would pay debts of the company, if necessary. The learned judge went on to say that the defence did not show that the appellant was in fact not authorised to sue the company and held that the law on this point is clear.

In *Mason & Son* v. *Mogridge*[1] a full Bench of the Queens Bench Division held that a single person cannot sue in a firm name.

However there is nothing to prevent a person being sued in the firm name a proposition which finds support in *Mallal's* Supreme Court Practice 0.48A r.11; see notes under the heading "May be Sued". See also notes made under 0.81 r.1 of the *Supreme Court Practice 1979 (White Book)* under heading "May sue or be sued".

The learned trial judge cited Australian Company Law and Practice by *Wallace and Young* – "where a contract is signed on behalf of a company by a person who could have been authorised, it will be presumed that he was so authorised."

We need not rely on the presumption because we are of the view that the law goes even further and allows a person who is the sole owner of the company to be sued in the company name.

The parties would like a re-trial but we think that course is not open to us.

We agree with the finding of the learned trial judge and dismiss the appeal with costs. Deposit to the respondent to account of taxed costs.

Appeal dismissed.

Solicitors: *Gill & Tang; Ong Ban Chai & Razak.*

CHENG CHUAN DEVELOPMENT SDN. BHD. v. NG AH HOCK

[F.C. (Suffian L.P., Salleh Abas & Abdul Hamid F.JJ.) April 28 & June 10, 1982]
[Kuala Lumpur – Federal Court Civil Appeal No. 25 of 1981]

Contract – Building contract – Agreement to buy shophouse – Booking proforma – Vendor increasing price unilaterally – Repudiation of contract – Anticipatory breach – Whether repudiation accepted by purchaser – Booking fee refunded by vendor – Cheque cashed by solicitors for purchaser – Whether this constitutes estoppel – Waiver – Damages – Measure of damages – Interest – From when payable.

Housing Developers – Sale of shophouse – Booking proforma – Vendor increasing price unilaterally – Repudiation of contract – Damages.

In this case the respondent had booked a shophouse constructed by the appellant who was a housing developer for $49,500. He paid $1,000 as a booking fee and signed a booking proforma. The booking proforma contained no provisions entitling the appellant to increase the price unilaterally. However, the appellant informed the respondent by letter that the price had been increased to $85,000 and the respondent was requested to pay a sum of $7,500 in order to make up with the $1,000 booking fee a 10% of the new price and to sign a purchase agreement. The respondent did not agree to the price increase. His solicitors sent a cheque for $3,950 towards the payment of the 10% of the agreed purchase price. The appellant's solicitors returned the cheque for $3,950 and also sent a cheque for $1,000 being the refund of the booking fee. The respondent was offered the shophouse at a reduced price of $81,000 and was told that if he agreed he should send a cheque for $8,100. The respondent did not accept the offer but his solicitors cashed the $1,000 cheque which was sent by the appellant's solicitors as a refund of the booking fee. The respondent then changed solicitors and the new solicitors sent a cheque for $1,000 to replace the booking fee. The cheque was not accepted by the appellant. The respondent sued the appellant for specific performance or alternatively for damages for breach of contract. Yusoff Mohamed J. gave judgment in favour of the respondent and the appellant appealed.

Held: (1) in this case there was a repudiation of the contract by the appellant and his refusal to sell the shophouse at the agreed price constituted an anticipatory breach of contract;

(2) the acceptance of the refund of the booking fee was neither a waiver of the respondent's right to performance nor an estoppel preventing him from suing the appellant for damages, but, if at all, could be construed as an acceptance of the appellant's repudiation of the contract, which in turn brought the contract to an end and at the same time entitled him to sue for damages;

(3) the respondent was only entitled to a sum of money which would compensate him for the loss which naturally arose from the breach. In the case of breach of contract assessment of damages has to be made on the date of the breach and in this case the learned trial judge had